

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 318 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL NARSI LAXMAN CHAPLA

Versus

PATEL MANJI KALA CHAPLA

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Appearance:

MR JR NANAVATI for Appellant

MR DAKSHEH MEHTA FOR MR DD VYAS for Respondent No. 1

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. This Appeal is preferred by the appellant original defendant, being aggrieved by the judgment and order passed by 2nd Extra Assistant Judge, Junagadh on 29th of March, 1982, in Regular Civil Appeal No. 160 of

1980, whereby the learned 2nd Extra Assistant Judge, Junagadh, set aside the judgment and decree passed in Regular Civil Suit No.12 of 1977 by Civil Judge (JD) Manavadar on 29th November, 1980, whereby the learned Civil Judge (JD), Manavadar, dismissed the suit of the plaintiff - present respondent.

2. As per the facts of the case, present respondent - plaintiff owns his ancestral house in village Sardargadh, taluka Manavadar near Chora. To the southern side of this house, there is a cattle shade of the present appellant - original defendant. To the southern side of the above referred ancestral house of the plaintiff and to the east of above referred cattle shade of the defendant, there is a fali land (open land) which is common. The said land has been the subject matter of the dispute till the Second Appeal. The plaintiff filed the suit stating that the said fali land is used for the purpose of passage for parking bullock carts and passing and repassing and to arrange mass banquets and for this use, according to plaintiff, for time immemorial, the plaintiff has acquired an easement right over this fali land. The plaintiff further stated that he came to know that 10 feet away from the cattle shade of the defendant as referred above towards east, defendant intended to construct a wall from north to south in length and towards touching the said wall one towards north and another towards south each having a height of 10 feet. The preliminary preparations were noticed by the plaintiff that the defendant was going to open a door facing east for the purpose of his ingress egress and therefore, the suit came to be filed by the plaintiff restraining the defendant from making any construction in the fali land because the plaintiff had acquired easement right over the fali land from the time immemorial.

3. The respondent - defendant contested the suit stating that the fali land in question was not a common, but owned by him exclusively. The defendant denied that the plaintiff had acquired any easement right either by prescription or by time immemorial. The defendant contended that he intended to construct on fali land because he had legal right to do so and the plaintiff had no cause of action or right, title or interest to prevent him from constructing the said wall. The defendant further stated that the fali land was purchased by him from the Government.

4. The learned Trial Judge vide his above judgment and order dated 29th November, 1980 dismissed the suit of the plaintiff being Regular Civil Suit No.12 of 1977 and

being aggrieved, the plaintiff filed Regular Civil Appeal No. 160 of 1980 in the Court of Second Extra Assistant Judge, Junagadh, who in turn, set aside the dismissal of the suit and further by his judgment and order dated 29th March, 1982, decreed the suit of the plaintiff and hence the Second Appeal by the original defendant.

5. Learned Advocate Mr. J.R. Nanavati for the appellant and learned Advocate Mr. Dakshesh Mehta for learned Advocate Mr. D.D. Vyas for the respondent were heard.

6. This Court has framed the substantial question of law as under :

" Whether Sanad Exh.53 is misinterpreted by the appellate judge?

7. From the rival contentions and from the record of the case, it clearly appears that the learned First Appellate Judge appreciated the evidence on record, documentary and oral as well. Learned Judge examined the title of the defendant as alleged in the suit regarding the fali land. Learned Judge appreciated the maps and extracts of the Revenue Department produced at Exhs. 44 to 57. Learned First Appellate Judge after appreciating the evidence observed that the extract Exh. 46 was relating to fali land in question which was described as "majmu". The learned Judge after appreciating the evidence, concluded on fact that the defendant failed to prove that he was the owner of fali land in question and that Sanad - Exh. 53 pertains to the cattle shade permission which was granted to the defendant. Interpreting the word 'majmu' learned First Appellate Judge observed that this land originally belong to then princely state and thereafter vested in the Government. The learned First Appellate Judge also observed that word "majmu" only connotes with the facts and circumstances of the case that the land was owned by the Government and will not connote that the fali land is owned by the parties or the neighbors around the fali land, and hence after believing the case of the plaintiff regarding his easement right as described aforesaid, a decree in favour of the plaintiff was passed.

8. In view of the above discussion, purely on question of fact, it was decided by the First Appellate

Judge that the fali land is not owned by the defendant and he has no right to construct over the fali land so as to obstruct the easementary right of the plaintiff.

9. In this view of the matter, since the controversy in the matter has been decided by the First Appellate Judge on question of fact, the same cannot be reopened in the Second Appeal. The substantial question of law therefore framed as above, in view of the decision on fact and in view of no substantial question arises in the matter, now does not survive and, therefore, there is no substance in the Appeal and the same is required to be dismissed.

10. In this view of the matter, Appeal is dismissed with no order as to costs.

(J.R. Vora, J.)

p.n.nair

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